

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

SUNTRUST BANK NATURE COAST)

PLAINTIFF,)

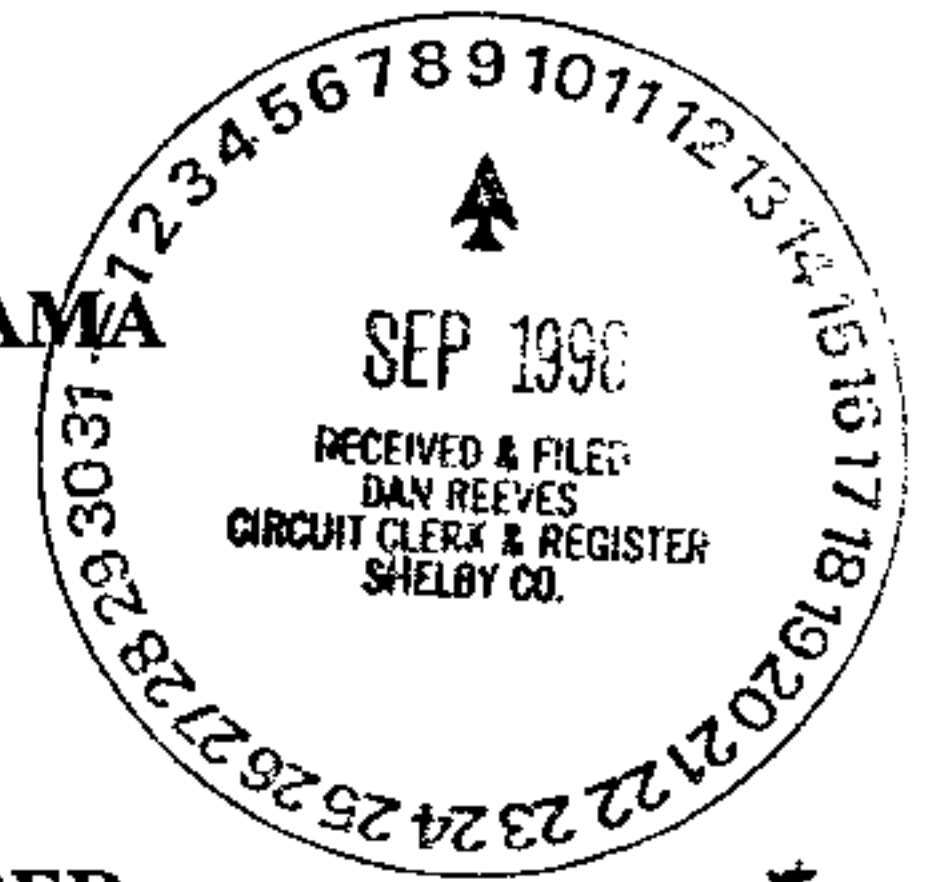
vs.)

JAMES PALMER, et al.)

DEFENDANTS.)

CIVIL ACTION NUMBER

CV 95-351



Inst. # 1998-41254

FINAL ORDER AND ENTRY OF JUDGMENT

This cause came to be heard on Plaintiff's Motion to Alter, Vacate or Amend the Judgment Entered on July 1, 1998, and upon Plaintiff's Motion for Final Summary Judgment on the Amount of the Debt Under the Mortgage. Present were attorneys representing the Plaintiff. Also present were James Palmer and Lois Palmer. After hearing statements and arguments of counsel and the parties, and after considering the evidence submitted by the Plaintiff, the Court finds that Plaintiff's Motion to Amend the judgment of July 1, 1998 is due to be granted. Accordingly, this Court enters the following final judgment.

This Court entered partial summary judgment on July 11, 1996 finding that SunTrust Bank Nature Coat, is entitled to conduct a foreclosure sale of the property and setting the foreclosure sale date. The Palmers filed an appeal and the foreclosure sale was continued. That appeal was dismissed by the Alabama Court of Civil Appeals.

In the July 11, 1996 order the Court also scheduled a hearing on July 30, 1996 to resolve the question of the amounts owed under the mortgage and referenced promissory note. At the hearing on July 30, 1996, the Court heard the testimony of Darwin Budnick, Vice President of SunTrust Bank, Nature Coast concerning the amount of the accrued debt owed by James and Lois Palmer on the mortgage. The Court did not enter judgment on the amount of the debt at that time, but continued the hearing. Therefore, this Court's order of July 1, 1998, which did not resolve the accrued amount of the debt owed by James and Lois Palmer and which did not schedule the foreclosure sale was premature and is due to be amended.

SunTrust Bank Nature Coast has submitted its Motion for Summary Judgment on the amount of the debt and has requested that this court schedule the foreclosure sale and publish notice of the foreclosure sale. SunTrust Bank Nature Coast has supported its motion with affidavits concerning the amount of the debt, specifically the amounts of principal, interest, escrow advances, late charges, taxes, attorneys fee and litigation expenses. James and Lois Palmer have not filed any affidavits or other evidence in opposition to SunTrust Bank Nature Coast's motion.

This Court has accepted and considered the untimely filing of James and Lois Palmer made on August 18, 1998, the morning of the hearing, which is titled "Defendants James and Lois

10/21/1998-41254
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Palmer's Opposition to Plaintiff's Motion for Final Summary Judgment on the Amount of the Debt Under the Mortgage and Motion for Order to Show Cause, Additional Opposition to Plaintiff's Rule 59 Motion, and Motion to Quash and Deny Plaintiff's Notices of Deposition." This "Opposition" does not contain the evidentiary opposition required by Rule 56.

This Court finds that SunTrust Bank Nature Coast's Motion for Final Summary Judgment is well taken and due to be granted.

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court as follows:

ONE: There being no evidence presented in opposition, there being before the Court substantial evidence to support the claims of SunTrust Bank, Nature Coast, this Court finds that the debt James and Lois Palmer owe SunTrust Bank, Nature Coast, accrued through July 14, 1998, is as follows:

PRINCIPAL	\$118,181.85
INTEREST	\$ 44,341.16
LATE CHARGES	\$ 2,237.85
ESCROW ADVANCES FOR INSURANCE (1994-1998)	\$7,135.00
TAXES (1993-1996)	\$5,290.44
TRAVEL EXPENSES (D. BUDNICK)	:
NOVEMBER 1995 DEPOSITION	\$610.10
JULY 1996 HEARING ON AMOUNT OF DEBT	\$733.87
COST OF VIDEOTAPING INTERIOR OF HOUSE	\$392.05
ALABAMA POWER	\$189.97
ALABAMA GAS	\$436.09
TOTAL	\$179,548.38
ATTORNEYS FEES	\$68,560.00
LITIGATION COSTS	\$5,719.85
Total	\$253,828.23

Additionally, this Court finds that interest and late charges continue to accrue at a rate of \$26.26 per day. From July 14, 1998 until August 18, 1998, this will accumulate for 35 days, and an additional \$919.10 will be owed for a total debt of **\$254,747.33**.

TWO: This Court finds that there is substantial evidence that SunTrust has incurred actual attorneys fees of \$68,560.00 and litigation costs and expenses of \$5,719.85 in enforcing the terms and obligations of the promissory note and mortgage. This Court finds that the hourly rate charged of \$85 per hour for associates and \$100 per hour for partners was reasonable, that the total expended hours, 784.7 hours (through July 14, 1998), was reasonable and that the total attorneys fees of \$68,560.00 are reasonable under the circumstances and were caused to be incurred by the actions of

James and Lois Palmer in opposing SunTrust Bank Nature Coast's rights under the mortgage and referenced promissory note.

This Court further finds that the attorneys fees which SunTrust Bank, Nature Coast has paid in this case are reasonable in light of the additional overwhelming evidence that: 1) the nature and value of the subject matter of the employment justify the legal fees; (2) the learning, skill, and labor requisite to the proper discharge of attorneys services in light of the claims justify the legal fees; (3) the time consumed justifies the legal fees; (4) the professional experience and reputation of the attorneys involved justify the legal fees; (5) the weight of the attorneys' responsibilities justifies the legal fees; (6) the measure of success achieved by SunTrust Bank Nature Coast justifies the legal fees; (7) the reasonable expenses incurred by SunTrust Bank Nature Coast justify the legal fees and costs; (8) the nature and length of the professional relationship between SunTrust Bank Nature Coast and its attorneys justify the legal fees; (9) the fee customarily charged in the Shelby County and Jefferson County area for similar legal services supports the legal fees; (10) the likelihood that this particular employment may preclude other employment justifies the legal fees; and (11) the time limitations imposed by the circumstances justify the legal fees. See Norman v. Montgomery Wholesale Lumber, 678 So.2d 1110, 1114-15 (Ala. Civ. App. 1996).

THREE: The total debt owed by James and Lois Palmer accrued through August 18, 1998 which SunTrust Bank Nature Coast may bid at the foreclosure sale to purchase the property is \$254,747.33.

FOUR: This Court ORDERS the Clerk of Court to publish the following notice of the foreclosure sale once each week for four consecutive weeks, beginning on September 16, 1998, in a newspaper of general circulation throughout Shelby County, Alabama of the following time, place, terms of sale and description of property:

On October 14, 1998 at 12:00 P.M. at the main entrance to the Shelby County Courthouse in Shelby County, Alabama, SunTrust Bank, Nature Coast as the mortgagee to a mortgage recorded at Book 177 page 611 in the probate office of Shelby County, Alabama, will sell at public outcry to the highest bidder for cash the following described real property, Lot 59, according to the survey of Meadow Brook, 17th sector, as recorded in Map Book 9, page 158 A & B, in the Probate Office of Shelby County, Alabama. This property is located at 3040 Brookhill Drive.

FIVE: This Court ORDERS that the foreclosure sale will be conducted at the main entrance to the Shelby County Courthouse at 12:00 p.m. on October 14, 1998.

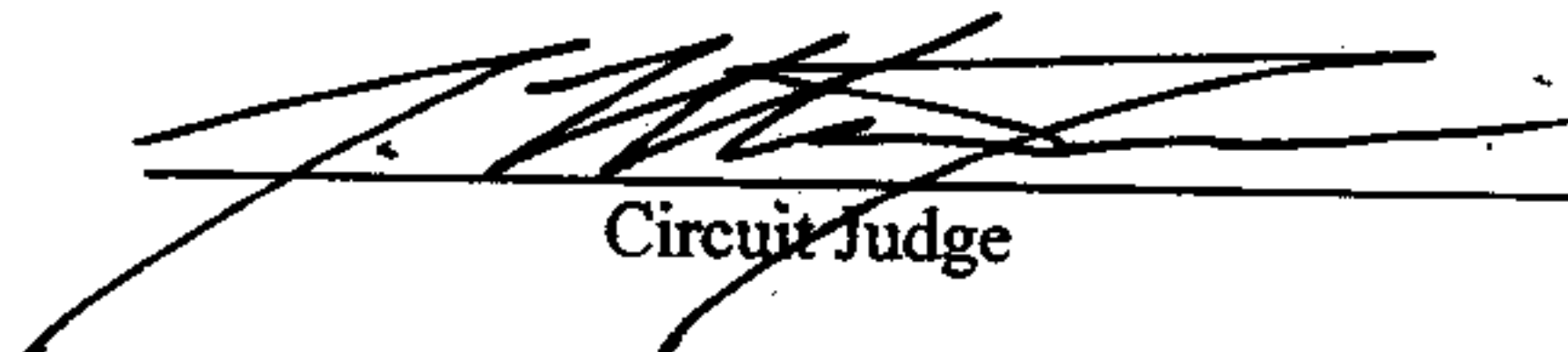
SIX: This Court ORDERS that James S. Witcher, III will be the auctioneer at the aforesaid foreclosure sale.

SEVEN: On December 16, 1996, this Court granted summary judgment in favor of SunTrust Bank Nature Coast on its claim for mesne profits under its theory of ejectment and awarded \$78,300

in damages. The award of damages of \$78,300 against James Palmer and Lois Palmer in favor of SunTrust Bank Nature Coast is made final.

NINE: This Court is aware that James and Lois Palmer have each refused to remove any and all of the personal property located within the house at 3040 Brookhill Drive. This Court reserves jurisdiction over the resolution of this matter; however, by reserving jurisdiction, this Court does not intend to prevent this order from being the final judgment in this case.

DONE and ORDERED this 9th day of September, 1998.


Circuit Judge

Inst # 1998-41254

10/21/1998-41254

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